

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

LECRENSKI BROTHERS, INC.

Employer¹

and

AMALGAMATED TRANSIT UNION
LOCAL 448, AFL-CIO

Petitioner²

Case 1-UC-864

DECISION AND ORDER³

The Employer is engaged in providing school bus transportation services. The Petitioner Union currently represents a bargaining unit composed of school bus drivers employed by the Employer at its 14 Delmont Avenue, Westfield, Massachusetts facility. In this matter, the Union seeks to clarify the unit to add minibus drivers and monitors.⁴ I find, for the reasons set forth below, that the petition should be dismissed.

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; and 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter.

⁴ At the hearing, the Union took the position that it did not seek to include the minibus monitors. In its post-hearing brief, however, the Union asserted for the first time that it now does seek to include the minibus monitors. The Union does not seek to represent three minivan drivers and three minivan monitors referred to below, who are also employed by the Employer.

FACTS

Bargaining history

The Employer provides school bus transportation services for the Westfield public schools in Massachusetts. After an election conducted by this Region pursuant to a Stipulated Election Agreement executed on November 30, 2001, the Union was certified, on January 16, 2002, as the representative of “All full-time, regular part-time and spare Westfield school bus drivers who work an average of 4 hours per week in the calendar quarter prior to the eligibility date for election employed by the Employer at its 14 Delmont Avenue, Westfield, Massachusetts facility.” Pursuant to the unit description, “special education van drivers and monitors.....and all other employees” were excluded from the bargaining unit.

The Employer’s president, Dana Lecrenski, testified that his company has had two successive contracts with the Westfield public schools to provide school bus transportation for Westfield’s regular education students, one effective from 1998 to 2003, and a second contract effective from 2003 to 2008.⁵ The bargaining unit currently includes 36 full-time school bus drivers who drive large, 71-passenger school buses.⁶ For ease of reference and to distinguish them from the petitioned-for minibus drivers, I shall refer to the bargaining unit drivers as regular bus drivers. There are no monitors on the regular buses. The Employer and the Union are parties to a collective-bargaining agreement covering the regular bus drivers that is set to expire on June 30, 2008.

At the time of the Stipulated Election Agreement and Certification of Representative referred to above, the Employer had two additional contracts with the Westfield public schools to provide transportation services. The second contract, which I shall refer to as the “minibus” contract, was effective from July 2001 through June 2004. Under this contract, the Employer transported Westfield’s special education students to schools within the City of Westfield in minibuses. It appears that most of the minibuses used then (and now) were 20-passenger vehicles, although there were also a few wheelchair vehicles that carried nine passengers plus two wheelchairs, for a total capacity of 11. Each minibus had both a driver and a monitor. Under the 2001-2004 minibus contract, the Employer employed 20 minibus drivers and 20 monitors.

The Employer’s third contract with the Westfield public schools, which I shall refer to as the “minivan” contract, required the Employer to transport special education students to special schools that are “out of district,” i.e., outside the City of Westfield, or to transport them from outside Westfield to schools within Westfield. These students

⁵ The invitation for bids that was submitted into evidence, however, shows an effective date of July 1, 2006 through June 30, 2009, with an option to renew for two additional one-year periods.

⁶ The record does not reveal the number of spare bus drivers in the existing unit.

were transported in seven-passenger minivans, each of which had a driver and a monitor. The Employer had two to three minivans at the time of the Stipulated Election Agreement and Certification in 2001-2002.

As noted above, Dana Lecrenski and the Union's attorney executed the Stipulated Election Agreement on November 30, 2001. With respect to the Election Agreement's exclusion of "special education van drivers and monitors" from the unit, Lecrenski testified, "We were talking about both the van drivers and minibuses drivers." For the duration of the 2001-2004 minibus contract, however, the Employer's minibus operation was located at a location on Union Street in Westfield.⁷ Thus, it does not appear that there were minibus drivers at the 14 Delmont Avenue location at the time of the Election Agreement and Certification. The record is silent as to what location the minivan drivers worked from at that time.

The Employer's 2001-2004 minibus contract with the Westfield public schools ended in June 2004, and the Employer lost the bid for the 2004-2007 minibus contract to another bus company, Five Star. At that time, the Employer's 20 minibus drivers became employees of Five Star and continued to drive out of the Union Street location.⁸ In February or March of 2007, the Employer was awarded the bid for the succeeding minibus contract, a two-year contract that is effective from July 1, 2007 through June 30, 2009, with an option to renew for an additional one-year period. At that time, the Five Star minibus drivers went back to work for the Employer.⁹ This time, the Employer located its minibus operation at 4 Clifton Street in Westfield, on a lot which is adjacent to the 14 Delmont Avenue site. There are currently 18 minibus drivers and 18 monitors who staff the minibuses and wheel chair vehicles.¹⁰

The Employer still has the contract for the minivan transportation service and currently employs three minivan drivers and three monitors for that operation.¹¹

⁷ The record does not reveal whether the Employer still has a facility at the Union Street location.

⁸ The collective-bargaining agreement covering the regular bus drivers is effective "as of the date of execution" until June 30, 2008. One of the signatories signed it on November 12, 2004, and the other signatures are undated. The contract establishes the drivers' wages as of September 1, 2004. Thus, it appears that the collective-bargaining agreement was executed sometime in the fall of 2004, at a time when the Employer no longer employed any minibus drivers.

⁹ Although Lecrenski did not mention the minibus monitors in the course of his testimony about losing and regaining the minibus contract, presumably the monitors, like the drivers, were hired by Five Star in 2004 and then went back to work for the Employer in 2007.

¹⁰ It appears that there is also a spare list for the minibus operation, but the record does not reveal the number of spares.

¹¹ The record does not reveal whether the Employer has held the minivan contract continuously since 2001 or whether, like the minibus contract, the Employer lost it and then won the bid for this work again.

Appropriateness of accreting the minibus drivers

The Employer owns the two adjacent Westfield parcels described above, one at 14 Delmont Avenue and one at 4 Clifton Street.¹² As noted above, the regular school bus operation is run from 14 Delmont Avenue, and the minibus operation is run from 4 Clifton Street. Each site has its own office.¹³ The two groups of employees are separately supervised, with the regular bus drivers reporting to Manager Nancy Kriesak and the minibus drivers reporting to Manager Nancy Darnell. The two managers do not fill in for one another during absences. Each manager handles her own payroll. Kriesak approves the regular bus drivers' requests for time off. The record does not indicate who does so for the minibus drivers. The two groups of drivers are dispatched separately, and each operation has its own radio frequency with which to contact the drivers. There are separate telephone and fax lines for the two operations.¹⁴

Both the regular bus drivers and the minibus drivers drive during the school year, which runs from the end of August or early September through the middle of June. The regular bus drivers all have three routes to run each day. Most of the minibus drivers have two routes, and some only have one route. In addition to their regular routes, the regular bus drivers do charter trips, such as transporting students to sporting events and colleges, and the minibus drivers transport students for occasional field trips.¹⁵ In addition to driving during the school year, some of the regular bus drivers and minibus drivers transport students to special programs over the summer months. Last year, there were 12 minibuses in operation during the summer, but only three to four of the regular bus drivers had summer routes.

The regular bus drivers are required to have a Class B commercial driver's license (CDL), while the minibus drivers are required to have a Class C CDL. Both the regular bus drivers and the minibus drivers are required to have a license with a "passenger transport vehicles" endorsement and a school bus driver certification that requires eight hours of annual training.¹⁶ Many of the children transported by the minibus drivers have

¹² Delmont Avenue ends at Clifton Street and Clifton Street ends at Delmont Avenue, i.e., the two streets intersect at right angles but do not cross each other. The two parcels, which are contiguous, are wrapped around the corner where the two streets intersect.

¹³ The Clifton Street location has only an office trailer.

¹⁴ The record does not reveal whether the minivan drivers are currently dispatched from the Delmont Street location, the Clifton Street location, or some other location, or to whom they report

¹⁵ There were only one or two field trips for the minibus drivers this year.

¹⁶ The minivan drivers are required to have a different type of driver's license with what is referred to as a "7-D" endorsement. Lecrenski testified that the minivan drivers have basically the same training as the minibus drivers.

physical handicaps, some of which necessitate wheelchair training for the minibus drivers. All of the Employer's drivers and monitors, including regular bus drivers, minibus drivers, and minivan drivers, are subject to a "CORI" check.¹⁷

Two of the minibus drivers, Peter and Victor (last names unknown), are on the spare list for the regular buses and occasionally drive a regular bus for charter trips that no other regular bus driver has signed up for. Peter does this once or twice a month at most, and Victor does this perhaps once or twice during the school year. In addition, one of the drivers on the regular bus spare list, Carl (last name unknown), has also driven a minibus as a spare three or four times during the past school year.¹⁸ Apart from those three individuals, there is no temporary interchange between the regular bus drivers and minibus drivers, and there is no evidence of any permanent transfers between the two groups.

From time to time, the transportation department for the Westfield public schools holds meetings with Employer's drivers to hand out the routes and answer questions. There are separate meetings for the special education and regular bus drivers. The meetings with the special education drivers cover topics that do not arise for the regular bus drivers, such as how to deal with the types of problems that special needs children have, and how to handle wheelchairs, harnesses, and car seats.

The minibus drivers park their own vehicles in a parking lot across the street from the Employer's premises that is leased by the Employer. Most of the regular bus drivers park their own vehicles on the premises at 14 Delmont Avenue, although a few park across the street, as well. Because the Clifton Street facility has only a portable toilet outside, once in a while a few minibus drivers use the bathrooms at the Delmont Avenue facility.

The compensation and working conditions of the regular bus drivers are governed by the Union's collective-bargaining agreement with the Employer, while the compensation and working conditions of the minibus drivers are governed by Employer policy. Both types of drivers work five days a week and are paid \$19.50 per hour¹⁹ for a minimum of four hours per day, although some actually work only three to three and a half hours. When the drivers do charter trips, which the regular bus drivers do more frequently than the minibus drivers, both types of drivers are paid a driving-time hourly rate of \$19.50 and a waiting-time hourly rate of \$16.75. Pursuant to the collective-bargaining agreement, regular bus drivers are paid an extra \$50 for working on their

¹⁷ I take administrative notice of the fact that the acronym "CORI" refers to Criminal Offender Record Information.

¹⁸ Carl is not actually on the spare list for minibus drivers, but has been asked to drive a minibus as a last resort.

¹⁹ The Employer's contract with the Westfield public schools requires it to pay this rate to the minibus drivers, pursuant to the prevailing wage law.

birthday and are eligible for a perfect attendance bonus. Neither of those benefits is available to the minibus drivers.

The Employer reimburses both regular bus drivers and minibus drivers for the \$40 annual cost of renewing their driver's licenses. Both minibus drivers and regular bus drivers participate in annual in-service training that is mandated by the state as a condition of licensure. The Employer pays the regular bus drivers \$10 per hour to attend up to eight hours of such annual training,²⁰ but the minibus drivers are not paid for training time.

The Employer does not provide insurance benefits to the regular bus drivers or to the minibus drivers.²¹ Neither regular bus drivers nor minibus drivers receive paid sick leave or vacation time. Pursuant to the collective-bargaining agreement, regular bus drivers may be granted up to three days off with pay to attend the funeral of a family member, and they may take ten unpaid leave days during a school year and five personal half-days for medical purposes. There is no written policy concerning the granting of leave to minibus drivers, which is up to the discretion of management.

The regular bus drivers are covered by a disciplinary policy in the collective-bargaining agreement that requires just cause for suspension or discharge and sets forth a progressive disciplinary system that includes verbal warnings, written warnings, suspension, and termination. Lecrenski testified that there is a written disciplinary policy for the minibus drivers, but he did not know exactly what the policy is or whether it is similar to the policy in the collective-bargaining agreement without having it in front of him. He testified, however, that the steps are not as formal and that discipline is up to the discretion of the manager. Union steward John Carbin testified that the written disciplinary policy that applies to the minibus drivers refers to the disciplinary policy in the collective-bargaining agreement.

ANALYSIS

Procedural matters

As previously noted, in its post-hearing brief, the Union, for the first time, asserts that it seeks to clarify the unit to include the minibus monitors as well as the minibus drivers. The minibus monitors were not encompassed by the petition, the Union

²⁰ Lecrenski testified that the regular bus drivers are paid \$9 per hour to attend training, but the collective-bargaining agreement indicates that the rate went up to \$10 per hour as of September 1, 2004.

²¹ Although Lecrenski testified that none of the drivers get insurance, he may have been referring to insurance paid for by the Employer. The collective-bargaining agreement covering the regular bus drivers states that the Employer shall continue to make available health insurance for those drivers desiring to pay for those benefits themselves. The record does not reveal whether the Employer applies a similar policy to the minibus drivers.

expressly took the position at the hearing that it did not seek to include the monitors, and the inclusion of the minibus monitors was, therefore, not litigated at the hearing. In these circumstances, I decline to consider the issue of the inclusion of the minibus monitors.

At the hearing, the Employer made a motion to dismiss the petition, renewed in its post-hearing brief, on the ground that, in the Certification of Representative, minibus drivers were specifically excluded from the unit because of the exclusion of “special education van drivers and monitorsand all other employees.” The Employer primarily argues that both minibus drivers and minivan drivers were contemplated by this exclusion because both types of drivers transport special needs students and receive similar training. I find that the minibus drivers were not, in fact, encompassed by the exclusions. First, the express language of the exclusions referred to minivan drivers and not to minibus drivers, who drive very different types of vehicles. Second, and more important, the unit description in the Stipulated Election Agreement and Certification was limited to employees employed at the 14 Delmont Avenue location, but there were no minibus drivers at 14 Delmont Avenue at that time, as the minibus drivers were then located on Union Street. Thus, even the generic exclusion of “all other employees” does not clearly encompass the minibus drivers.

Further, even if the minibus drivers had been expressly excluded from the unit at the time of the Stipulated Election Agreement and Certification, their prior exclusion would not, in and of itself, preclude the Union from seeking to accrete them now. The Employer argues that the Union’s lack of action to include the minibus drivers during the negotiations that led to the current collective-bargaining agreement precludes the current petition. It appears that the Employer is making an argument pursuant to a line of cases under which a unit clarification petition submitted during the term of a contract that specifically addresses the disputed classification will be dismissed, unless, during the course of bargaining, the moving party reserved the right to file a petition. *Edison Sault Electric Co.*²² In this regard, I note that the recognition clause of the collective-bargaining agreement in this matter does not address the disputed classification, as it makes no mention of excluding minibus drivers. Nor would there have been any reason to exclude them, because the Employer had lost the minibus contract at the time the collective-bargaining agreement was executed and, therefore, did not employ any minibus drivers at that time. I find that the Union was not required to reserve its right to file a UC petition concerning a classification not then employed by the Employer.

To the degree the Employer is arguing that the Union’s execution of a stipulated election agreement excluding the minibus drivers demonstrates that they do not have a sufficient community of interest with the regular bus drivers to warrant their accretion, I reject that argument, as well. The Board has long held that certifications that resulted from stipulations of the parties, which are not considered a Board pronouncement on the merits of the unit sought, are not binding on the Board, and are not to be given any

²² 313 NLRB 753, 753 (1994), cited in *UMass Memorial Hospital*, 349 NLRB No. 35, slip op. at 2 fn. 6 (2007).

weight in subsequent proceedings in which the issues are fully litigated. *Coca Cola Bottling Co of Baltimore*,²³ *Bowman Transportation, Inc.*,²⁴ and *Vangas, Inc.*²⁵

Appropriateness of accretion

Turning to the merits, unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement, or within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. *Bethlehem Steel Corp.*²⁶ The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to such units are not accorded a self-determination election, and the Board seeks to insure the employees' rights to determine their own bargaining representative. *Passavant Retirement & Health Center*.²⁷ An accretion to a bargaining unit will be found only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted. In determining whether the employees at issue share a sufficient community of interest with unit employees, the Board considers factors including interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employee skills and functions, supervision, and collective bargaining history. *E.I. Du Pont De Nemours, Inc.*²⁸ Employee interchange and common day-to-day supervision are the two most important factors. *Archer Daniels Midland Co.*²⁹

I find that the minibus drivers do not share such an overwhelming community of interest with the regular bus drivers that they should be compelled to be included in the bargaining unit without the opportunity to express their preference with respect to union representation.³⁰ Thus, it cannot be said that the minibus drivers have no separate

²³ 156 NLRB 450, 452 (1965).

²⁴ 166 NLRB 982, 983 (1967).

²⁵ 167 NLRB 805, 806 (1967)

²⁶ 329 NLRB 243 (1999).

²⁷ 313 NLRB 1216, 1218 (1994).

²⁸ 341 NLRB 607, 608 (2004).

²⁹ 333 NLRB 673, RD at 675 (2001).

³⁰ A self-determination election is the proper method by which a union may add unrepresented employees to a contractual unit. *Warner-Lambert Co.*, 298 NLRB 993 (1990). In order to do so, however, it is necessary to determine the extent to which the employees to be included share a

identity. The minibus drivers are separately supervised from the regular drivers. The two groups work at separate, albeit physically contiguous locations, and there is no evidence that the two types of drivers have any work-related contact with one another. There is only very minimal temporary interchange and no evidence of any permanent transfers between the two groups. The regular drivers and minibus drivers drive different types of vehicles that require different types of driver's licenses, and only the minibus drivers have to deal with wheelchairs and other considerations that arise in transporting special needs children.

I find this case analogous to *Archer Daniels Midland Co.*,³¹ in which the Board declined to accrete employees of a newly-constructed refinery plant into an existing unit of employees at the employer's nearby processing plant. Although the new refinery was located immediately to the west of the processing plant and was, thus, geographically proximate, the Board noted that there was no interchange of employees between the two facilities, no common supervision, employees of the two facilities had no contact with each other in the performance of their job duties, the employees worked in completely different physical areas, and the terms and conditions of employment at the two facilities differed. Each facility was a distinct operation that could be operated without the existence of the other facility. In these circumstances, the Board found, as I do here, that the employees at issue lacked a sufficient community of interest with the already-represented employees to compel their inclusion in the established bargaining unit without a vote.

ORDER

IT IS HEREBY ORDERED that the petition is dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by June 4, 2008.

In the Regional Office's original correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the web site, select the **E-Gov** tab and click on **E-Filing**. Then select

community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group.

³¹ Supra, RD at 676.

the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

/s/ Rosemary Pye

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
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Dated at Boston, Massachusetts
this 21st day of May, 2008.

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